marked that in a large proportion of the cases the decisions have been by divided courts. The majority opinion's view was taken in *Reinders* v. *Koppelman*, 68 Mo. 482, 30 Am. Rep. 802; *Baker* v. *Cowser*, 138 N. W. 837, (Ia.) (two judges dissenting); *White* v. *Dotter*, 73 Ark. 130. The Iowa and Arkansas cases referred to cite as authority *Upson* v. *Noble*, 35 Ohio St. 655 and *Hole* v. *Robbins*, 53 Wis. 514. Although the language in these two cases is broad enough to include the proposition that an adoptive parent does not inherit from an adopted child, even though its property has come to it by inheritance from an adoptive parent, that question was not in issue in those cases; the question was whether the adoptive or the natural parent inherits from an adopted child, when the property has come to the child from a natural parent. No case has held that property inherited by an adopted child from a natural parent goes, upon the death of the adopted child, to the adoptive parent.

The view the dissenting judge took in the principal case has been taken in *Humphries* v. *Davis*, 100 Ind. 274, 50 Am. Rep. 788, which is a leading case on this subject. The Indiana view, as laid down in *Humphries* v. *Davis* has been followed in *Lanferman* v. *Vanzile*, 150 Ky. 751 (three judges dissenting), *Jobson* v. *Jobson*, 164 Cal. 312 (two judges dissenting), *Calhoun* v. *Bryant*, 28 S. D. 266.

The courts which take the view expressed in the majority opinion base their decision on the ground that adoption statutes are in derogation of the common law and should be strictly construed, and that unless the statute expressly provides that an adoptive parent may inherit from an adopted child, the blood kin inherit in preference to the adoptive kin. The dissenting judge, and the line of authorities that have taken his view, hold that adoption not only creates the status of child, but also the corresponding status of parent, and that the right of inheritance, generally an incident to the status of parent and child, may be implied. This line of authorities also bases its view on the ground that it is the most equitable, reasonable, and humane construction that can be given to statutes of adoption, as expressed by the dissenting judge in the principal case: "It is so monstrously unjust to conceive of a man laboring and accumulating a fortune and dying and leaving it to his wife and adopted child, and that upon its death before the death of its adoptive mother, the adopted child's relatives, strangers to his blood, should take the property of the child thus inherited in the family, rather than the adoptive mother." In *Humphries* v. *Davis*, Judge ELLIOTT said: "Courts can neither wrest words from their plain meaning nor violate the spirit of a statute upon their own notions of natural justice; but, when the statute is general in its terms, courts may give such construction as will make its operation just and beneficial." The view taken by the dissenting judge seems to be the more reasonable and just, a view consistent with the policy of encouraging adoption, rather than discouraging it, and, under Judge ELLIOTT's rule of construction, is wholly warranted. J. G. C.

COMMON LAW RIGHT OF DISCRIMINATION AS AFFECTED BY FEDERAL STATUTES.—In the recent case of *Hocking Valley Ry. Co.* v. *United States*,

210 Fed. 735, decided by the Circuit Court of Appeals for the Sixth Circuit, the defendant Company had been indicted for giving special concessions to a shipper, in violation of that portion of the INTERSTATE COMMERCE ACT known as the ELKINS ACT of Feb. 19, 1903, as amended June 29, 1906, which provides, "that it shall be unlawful for a carrier to give any concession or discrimination in respect to the transportation of property whereby it is transported at a lesser rate than that named in the tariff, or whereby any other advantage is given or discrimination is practiced, and that the carrier so discriminating is guilty of a misdemeanor." The court *held* that the giving of long credit to one shipper according to a prior contract, whereas other shippers are required to settle promptly, is discrimination, within the terms of the act, discrimination being defined to be "the act of treating differently, or the antithesis of advantage."

According to the common law rule, the doctrine prohibiting discrimination extended no further than to compel the carrier to transport the goods of all who desired, for a reasonable compensation, and to furnish reasonable facilities to all. It did not prevent a carrier from carrying the goods of another at a less than reasonable rate, if it so desired. To quote a leading case on the subject: "The common law rule required equal justice to all, but the equality which is to be observed in relation to the public and to every individual consists in the restricted right to charge in each particular case of service a reasonable compensation and no more. If the carrier confines himself to this, no wrong can be done and no cause afforded for complaint, *Fitchburg R. R. Co.* v. *Addison et al.*, 12 Gray (Mass.) 393. The doctrine presented by this case was in accord with the great weight of authority both in England and America. *Baxendale* v. *Eastern Counties Ry. Co.*, 4 C. B. (N. S.) 61; *Chicago etc. Ry. Co.* v. *Chicago, etc. Coal Co.*, 76 Ill. 121; *Eclipse Towboat Co.* v. *Pontchartrain R. R. Co.*, 24 La. Ann. 1; *Allen* v. *Cape Fear etc. Ry. Co.*, 100 N. C. 397; *Randall* v. *Richmond etc. R. R. Co.*, 108 N. C. 612; *Johnson* v. *Pensecola, etc. R. R. Co.*, 16 Fla. 623; *Toledo etc. Ry. Co.*, v. *Elliot*, 76 Ill. 67; *Avinger* v. *S. C. Ry. Co.*, 29 S. C. 265.

Most of the early cases in conflict with the general common law rule will be found to have been controlled largely by legislation. For example, see *McDuffee* v. *Portland etc. R. R.*, 52 N. H., 430, where suit was brought under an act requiring that all persons shall have reasonable and equal terms, facilities, and accommodations, etc.

§ 3, of the INTERSTATE COMMERCE ACT, of Feb. 4, 1887, modified the common law doctrine with respect to interstate shipments to a considerable extent. It provided, "that it shall be unlawful for any common carrier subject to the provisions of this act, to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage." This section of the Act, however, has been strictly construed, and while rebating and discriminations with respect to shipping rates were considered within its provisions, (See *U. S.* v. *Chicago & Alton Ry. Co.*, 148

Fed. 646) the giving of credit to some shippers and not to others, under facts identical with those of the principal case, was not so considered. *Gamble-Robinson Co.* v. *Chicago & N. W. Railroad Co.*, 168 Fed. 161; *Oregon Short Line & U. N. R. Co.* v. *Northern Pacific R. Co.*, 51 Fed. 465, 61 Fed. 158, 9 C. C. A. 409; *Southern Indiana Express Co.* v. *United States Express Co.*, 92 Fed. 1022; *Little Rock Railroad Co.* v. *St. L. Railroad Co.*, 63 Fed. 775; *Gulf, C. & S. F. R. Co.* v. *Miami S. S. Co.*, 86 Fed. 407. The question considered in all of these cases is whether or not the discrimination alleged was "undue and unreasonable."

Apart from statutory regulation, the trend of decisions up to the time of the ELKINS ACT, seemed to be to the effect that any act by which a carrier charged one shipper more than another, under similar circumstances, was conclusive evidence of an unreasonable discrimination. To quote from a leading case sustaining this point: "The object of the statute relating to interstate commerce is to secure the transportation of persons and property by common carriers for reasonable compensation. No rate can possibly be reasonable that is higher than anybody else has to pay. Recognizing this obvious truth, the law requires the carrier to adhere to the published rate as an absolute standard of uniformity. The requirement of publication is imposed in order that the man having freight to ship may ascertain by an inspection of the schedule exactly what will be the cost to him of the transportation of his property, and not only so, but the law gives him another, and a very valuable right, namely, the right to know, by an inspection of the same schedule, exactly what will be the cost to his competitor of the transportation of his competitor's property." *United States* v. *Chicago & Alton Ry. Co.*, 148 Fed. 646. Approved, *United States* v. *Atchinson, T. & S. F. Ry. Co.*, 163 Fed. 111.

The rule as it existed under the common law was entirely displaced as to interstate shipment by the ELKINS ACT of 1903, as amended in 1906, that part of which is applicable to the facts set forth in the principal case being quoted above. It is contended by the court in the principal case that the holdings in cases decided under the INTERSTATE COMMERCE ACT alone, which prohibits only undue or unreasonable preference, cannot be applied to a statute which prohibits absolutely any disadvantage, without regard to its undue or unreasonable quality. Under the law as it stands today, controlled by the various Federal statutes, therefore, not only a difference in tariff rates, but any act on the part of the carrier which confers upon one or more shippers an advantage not enjoyed by all alike, is discriminatory, and subjects the carrier to the penalties imposed by the statute. J. G. T., JR.